

COMMISSIONERS APPROVAL

CHILCOTT *gc*

LUND *BT*

THOMPSON

TAYLOR (Clerk & Recorder)

Date.....August 3, 2006

Members Present.....Commissioner Greg Chilcott and
Commissioner Betty Lund

Minutes: Sally Fortino and Glenda Wiles

Commissioner Alan Thompson was in Chicago for a National Convention meeting.

The Board of County Commissioners met to discuss and possibly decide on an extension request for Sunset Orchards #3, Block 8, Lot 44B. Present were Karen Hughes and Rene Van Hoven, Planning Department;

Commissioner Chilcott explained the recommendation from the Planning staff was not to waive the fee, but to charge the fee in place at the time of application (\$20), and approve the request for extension to February of 2008.

Commissioner Lund made a motion to approve the extension request for Sunset Orchards #3, Block 8, Lot 44B. Commissioner Chilcott seconded the motion, and all voted 'aye'.

Renee clarified that the Planning Department is not recommending a waiver of fee, but of accepting the fee at the level it was at the time of application. (\$20 fee)

In other business, the Board of County Commissioners met for final approval of Sunnyside Orchards #3, Block 9, Lot 24A, and final approval of Coyote Nights View Estates. Present were Kelley McCormick; Vivian Depee; Howard Anderson; Skip Rosenthal, Human Relations; James McCubbin, Deputy County Attorney; Karen Hughes and Tristan Riddell, Planning Department; David Ohnstad, Road And Bridge Department; Terry Nelson, Applebury Survey; Ron Umera; and several interested parties.

Commissioner Chilcott opened the meeting, reminding the audience that the question to be addressed was the final plat's conformity to conditions, laws and regulations set forth in conditional preliminary approval and subdivision regulations.

Because Mr. McCormick's attorney would be late for the meeting, the Board decided to move to the second item on the agenda which is the final approval for Coyote Nights View Estates Subdivision.

Commissioner Lund said the Board of County Commissioners is in receipt of a letter from the Planning Office, recommending approval of the Coyote Nights View Estates Subdivision. Commissioner Lund made a motion to approve the Coyote Nights View Estates Subdivision. Commissioner Chilcott seconded the motion, and all voted 'aye'.

Trent Baker, attorney for Mr. McCormick, arrived at the meeting, which recessed briefly to allow the attorneys to confer.

Commissioner Chilcott reconvened the meeting, addressing the final plat decision on Sunnyside Orchards, again reminding everyone that the question to be addressed was the final plat's conformity to conditions, laws and regulations set forth in subdivision regulations and County regulations.

Terry Nelson said the subdivision was proposed in 2004. He said the final plat had received additional scrutiny as a result of having Skip Rosenthal, a County employee as a neighbor of the developer.

Commissioner Chilcott called Terry's remarks inflammatory, stating that Skip's concerns had received no special treatment; Skip had not been allowed to approach the Board of County Commissioners in any matter regarding the subdivision.

Terry said he felt the subdivision seemed to be more closely scrutinized than any others. He said the road requirements seem to have been changed to accommodate a specific situation; that being Mr. Rosenthal's driveway. Terry stated the road now functions as a super highway going to one person's driveway. There is latitude for design under the old regulations. The engineer's report state the road was built to county standards. Terry said the County Road Department would not normally review a road, but they were called to do so in this case. Mr. McCormick has had to obtain an address change, which required many documents to be changed. Grates were required in five places.

James said the conversation was far a-field from anything on the day's agenda. The only issue on the agenda was whether or not the conditions have been met for final approval (ditches, width of road, and certification by licensed engineer).

Terry said grates are required on both sides. The interpretation has changed. The issue with grates now is the only downstream water user is the Lee Metcalf Refuge.

Commissioner Chilcott said there is no issue there. The Board of County Commissioners didn't write the regulations. It is impossible to go back in time to change them. He stated the Commissioners must comply with the regulations.

James said a variance is an alternative.

Commissioner Chilcott repeated that the final plat was the subject for the meeting. Terry asked if Ravalli County would follow through in an expeditious manner. Commissioner Chilcott asked if all requirements have been fulfilled. Terry said 'yes'.

Karen referred to a letter received earlier this year, stating some requirements have not been met. Ditches are required, they are not in place; engineers say this has been past practice, but it is clear ditches are required. Roads must meet standards. Any variation would require a variance. They asked the County Road Department to go out with them for a site visit; their comments were forwarded to the Commissioners. Condition Nine was discussed with Terry, who said it made no sense. Grates have been installed. In terms of final plat requirement for alteration of irrigation ditches, there appear to be at least two alterations that required notarized authorization.

James said they could accept testimony to fulfill the requirement that the applicant supply a list of downstream users.

Karen said the grates were not installed at the time of the site visit.

Commissioner Chilcott said in some cases the federal requirements are in conflict with the County requirements. The opposing requirements present a problem.

Karen said they must use a variance to get around it. James said they 'could not just decide not to require something'.

Terry stated Mr. Baker said the letter meets the spirit of the regulations. It should be considered a minor deviation rather than variance.

James quoted the definition of a minor deviation. He said it was up to the Board of County Commissioners to determine if this meets the definition and make a finding to that effect. Commissioner Lund said it seems to meet the minor deviation definition. Terry said the definition seems to fit the road quite well.

Commissioner Lund made a motion to have a finding that the letter from the US Interior Fish and Wildlife does comply with our regulations.

Commissioner Chilcott seconded the motion, and said he has discussed the letter with Steve. This is to verify signatures. Commissioner Chilcott said he knows Steve's signature well enough to verify, but he is not a notary. The Commissioners have determined this technicality and response from the federal authorities could not be foreseen. It meets the definition of a minor deviation. All voted 'aye'; the motion carried.

Commissioner Chilcott asked if the grate issue was off the table. Karen said they haven't had consulted with the Supply Ditch yet.

James said there could not be a consultation before they had a design plan. Commissioner Chilcott said they are waiting for a response from the Supply Ditch. Overlook Trail meets County standards.

Terry said in light of the minor deviation definition, they applied for a variance to not build a road; it was not in the preliminary plat decision. If it is a good enough road to service Mr. Rosenthal's property, it seems to meet the definition of being able to make small changes to the road plan as shown in the regulations.

Commissioner Chilcott said the regulations for a road were in the sub-regulations, under which they were operating. They have been around since 1997. Commissioner Chilcott noted that Terry says the reason the road went from 20-15' was to accommodate Mr. Rosenthal's driveway. He asked if it is a road, not a driveway. James said a driveway is an access that only serves the parcel on which it is located. This is a road across Mr. McCormick's property, serving the Rosenthal parcel.

Commissioner Chilcott asked if it is a dedicated roadway. Terry said it seems to be a road to all these benefited, through all burdened lots. Applebury Survey surveyed the roadway in 1991.

Commissioner Chilcott said this was a road for 10 years before the application was submitted. It has been a road; to call it a driveway is distorting the facts. Terry said the engineer's plans were to meet up with the existing road.

James suggested they address that as another issue if it is a technical or engineering situation. This does not fit the deviation definition.

Terry said the plans for what the road should be already existed. When the variance was denied that meant that he had to follow the regulations. A technical change from that meets the minor deviation definition. If an individual is required to go through the variance request, it would mean time and money spent unnecessarily. If the Commissioners are comfortable with the way the road services the far lot, this can be passed on.

Commissioner Chilcott asked if it is built to specs; minimum thickness, crowned correctly, etc. (Commissioner Chilcott quoted from a document submitted to the Planning Department by the Road and Bridge Department, enumerating those points that seemed not to be in compliance.)

James said the certification must confirm that the road meets the regulation standards, not a design plan. In general, the engineer's certification should be accepted as valid, unless there is something easily discerned to be in exception to regulations. He suggested the existing engineer's opinion be accepted, unless there is an alternate consulting engineer's opinion.

Commissioner Chilcott said prior to changing to AASTHOW standards, the standards were inflexible. The new standards have latitude. These do not. James said flexibility from any standards requires a variance.

Commissioner Chilcott said they don't have the authority to say they don't like a regulation and throw it out.

James said the site visit by staff and the road supervisor found the road to be deficient in at least the width and not legally approvable at this point.

Commissioner Chilcott asked if the road is built to standard.

Ron Umera submitted road certification, in notes following the meeting with the Road Supervisor David Ohnstad. He inspected the sub base, but cannot certify what he didn't see. He said he would revise the report.

Karen said the changes she made regarding runoff come only from Mr. McCormick's property. The road was designed to slope in one direction for that reason. Several projects have been reviewed that had the same situation; the slope did not increase any runoff problem.

James said final plat requirements need the engineer's certification to County standards.

Ron said they need a core sample.

Commissioner Lund asked if Ron would certify if core samples verify under-layment.

Ron said he has a geotechnical engineer who would. If it meets the specs, there is no problem. He asked about the shoulder issue.

Karen said they didn't deal with the shoulder issue. That would be an issue for the Road Department. The road tapers to less than 20' before it gets to Mr. Rosenthal's existing roadway. James said the plans submitted have not undergone any approval by the County.

Karen said the travel surface should be 20' wide from boundary line to boundary line. The alternative would be a variance.

James said this is not appropriate for a minor deviation; it has to be a technical or engineering matter that was not predictable.

Jason Girard works with Marcus Daly hospital in the ambulance service department. He is also a member of the fire department. He said it is not a passable road for an ambulance; if he were called to Kelly's house he wouldn't be able to find it. If he were called to the Rosenthal property, the width would be a concern.

Mr. McCormick said the lane that tapers is the southbound one. It gradually brings you over safely. If demanded by Mr. Rosenthal to construct to the same manner, he would require Mr. Rosenthal's cooperation to take out part of his fence. Mr. McCormick stated Mr. Rosenthal has been a thorn in his side. If the road had been developed it would have been problematic to him in the future. On that point, in good faith they went out of their way to accommodate. Mr. Rosenthal met the engineer and told him the road doesn't meet standards. Final inspection was unprecedented. The county almost never requires inspection by the Road Supervisor. Tristan Riddell was hired to expedite old subdivisions. When Tristan was asked if he would sign off on the road if the road supervisor was not here, Tristan said he would. The issue of grates was raised again. Then the chief of planning suggests the road needs a cul de sac. Things have been brought in the last two weeks; grates, cul de sac, taper. Authorization was received on August 1st; but new and additional issues have surfaced in the last two days. The same company paved Gem Estates, across the road on the same day. That core sample passed. This one comes off a gravel road onto a paved road that serves only the Rosenthal property. The road is overkill. The fact it is paved is ludicrous. The issue would have been resolved if the Road Department wasn't involved. They were involved at the request of a County employee, Skip Rosenthal. Mr. McCubbin does not run the County. The Board of County Commissioners makes the final decision.

Commissioner Chilcott said this is the second time Mr. McCormick has spoken to them, but he has had representation at every meeting. All the concerns have been stated through Terry. It would be imprudent of the Commissioners not to listen to legal counsel, since they are not attorneys.

Skip said he did not oppose the subdivision, just the variance request. It would prevent him from ever developing his property. The road is now in worse condition than it was prior to the work on it. He wanted to be assured that he doesn't have responsibility to improve the road further if he decides to subdivide.

Commissioner Lund asked if he has a 60' easement. Skip said if they guarantee that he doesn't have to improve the road. Commissioner Lund said the tapering is needed if the road is taken out to the edge. She asked, 'If we had Mr. McCormick extend the road, would you object to him taking the road to the point that required moving the fence?'

Skip said he would be willing to discuss it. Commissioner Chilcott said tapering the road is a variance. Commissioner Lund asked if the variance were granted, would the road look like it does today. Commissioner Chilcott said they need a latecomers' agreement in case Skip and Mr. Henderson decide to develop. It would allow Mr. McCormick an opportunity to recover a proportionate share downstream from his project.

Ron suggested they put up a barricade or some type of reflector to improve direction to Skip's property.

Skip said he is willing to say he has no problem with tapering, but he would need an agreement to absorb the costs of widening the road on his section of property.

Mr. McCormick agreed, on the condition that the final plat approval is signed today. Commissioner Lund said it could not be signed today.

Terry asked if it could be stated that the final plat approval would be signed upon certification.

James said you couldn't legally condition a signature on a final plat. They would need a continuance for a condition on final plat approval. Variance conditions must be met. (Problems with Road: ditches, width of road, certification by licensed engineer.)

Mr. McCormick asked why this one is different.

Commissioner Chilcott said Mr. McCormick has stated he has been oppressed and harassed. The Commissioners' discussions with Mr. Rosenthal have been in this room. Mr. Rosenthal has done a superb job of separating his personal, private affairs from his job at the County. There is no way to grant the road deviation from the plans without a variance. It is a variance from the regulations under which the subdivision was proposed.

Commissioner Lund said she disagreed.

Commissioner Chilcott said they don't have the latitude to disregard the law.

James said the regulations were amended because they were not well done.

Mr. McCormick said he has seen many roads with one ditch.

Ron said he could install a ditch now, but it will concentrate water with no place to take it. He has reviewed several developments with the same situation, and has handled it the same way.

Commissioner Chilcott said things deviate from past practices because they get overlooked. There was no road plan to discuss. The discussion could have been held back then, but there was no reason to do it without plans.

Terry stated these were unseen changes and these are minor deviations. He stated the Board of County Commissioners could solve this by allowing the minor deviation with core sample that shows the road has the proper base and the ditch has the proper notification. Final approval should be possible if they could provide these things. The Board of County Commissioners has the authority to direct staff to show that final approval can be granted. He stated they already have a letter from staff and these are simply minor deviations.

Mr. McCormick stated this has never been a variance, and he is still being required to do more than what is typical.

Commissioner Lund asked James about the 10 days left on the time line. James stated there is plenty of time to do a variance. Commissioner Lund stated if the road issue and the consultation on the Supply Ditch are done, they do not need a variance. Terry stated he needs an assurance that a variance is not required if he brings in those issues.

Commissioner Chilcott asked what would happen if they took a security agreement to perform that work in the future. James stated the Board of County Commissioners would need to make a finding about the adequate amount of security that would be in order to complete the infrastructure improvements with an improvement agreement. Those improvements being: ditches, increasing width of road and certification of road. Commissioner Chilcott asked if an agreement with surety would complete the tapered portion of the road.

Terry stated an agreement between Mr. Rosenthal and Mr. McCormick should work. Commissioner Chilcott stated they must follow the subdivision regulations. Terry stated the engineer has done good work and he can stamp his approval. Commissioner Chilcott stated he is putting too much weight on Mr. Rosenthal. The regulations must be satisfied; an agreement between two landowners does not satisfy our regulations. A security agreement would satisfy the regulations.

Terry asked if the County considers the ditch a minor deviation if Mr. McCormick paved the triangle. Commissioner Chilcott stated if the engineer certified that reasonably anticipated CFS could be controlled, he would need to review the regulations in regard to compliance.

Terry asked if the ditches were satisfied. James stated they would need an engineer's certification that there are ditches. Terry stated with that type of assurance they could ask for an extension.

James said the Planning staff has ten days to make recommendations on final plat submittals, and the Board of County Commissioners must notify the applicant within five days after the decision. Therefore, you are on a time line and you must agree on a time.

Mrs. McCormick stated she needs assurances that if they do these things then they will have final approval. She stated this is costing them quite a bit of money. Mr. McCormick said all these new requirements are coming forth on the eve of the final approval. We need a concise list of requirements and guarantees that no additional issues will be required. These new things came about because of David Ohnstad's visit. James stated you need an engineer's certification to show there are ditch(s). Ron Umera stated his certification does address the ditches. Commissioner Chilcott stated his certification shows they are unnecessary, but the regulations do not provide him that latitude. So they need a certification that ditches do exist. Ron stated he takes exception to this because of the other three projects he dealt with in the past.

Trent Baker stated Ron said the road meets the drainage requirements. The exposure to the County is someone in the wings waiting to sue, and Mr. Rosenthal stated his concern

is the paving of the triangle, and thus you have some discretion in this regard. Trent stated things are close enough that the minor deviation language can work.

James stated there is a road certification in the regulations to show standards that have been met. This must be filled out, and in the portion under ditches, Ron can sign 'yes'. That is his certification on his engineer's stamp. Trent stated the issue winds up there: if Ron is comfortable with his design, does the county then accept or do you throw out the certification?

Howard Anderson stated the regulations show ditches, and also refers to the purposes for storm water being handled; if that storm water is being handled, and then the county should be ok.

James stated if there is certification that the ditch requirement has been met, neither the Attorney's office nor Planning will have a problem. Ron stated he could not certify that because he eliminated the ditch. Commissioner Chilcott asked if Ron could certify that the ditches on the property can handle the storm water. Ron stated there are no 'ditches'.

Trent stated he is hearing from Ron that he is not sure he can check the box. The solution is the regulatory requirement that the engineer states the storm water is dealt with. Trent stated Ron is comfortable that the ditches are taken care of. The Board of County Commissioners should not interpret the regulations in an absurd way. James stated this is a great pitch for a variance, but the regulations require the certification. The Board of County Commissioners cannot approve unless you meet the regulations. So we either need the ditches 'box' marked 'yes' or we need a variance. He does not anticipate an issue with the engineer signing off showing ditches; then the Board of County Commissioners won't have a problem with it.

Terry stated they could obtain the certification on the road and ditches. Then he can obtain consultation with the Supply Ditch. They need at least 2 weeks before meeting with Planning.

Terry requested a 2- month extension after they turn in the necessary items to Planning.

Commissioner Lund made a motion to grant a two-month extension, more time will be considered if needed; and the Planning Office will accommodate as expeditiously as possible. Commissioner Chilcott seconded the motion and all voted "aye".

In other business the Board met with Jim Morton of Human Resources Council in regard to the yearly support letter for the Emergency Shelter Grant in Ravalli, Mineral and Missoula County. Jim presented a budget for this grant between the years of 2002 – 2007. Commissioner Lund made a motion to write a letter of support for this shelter grant program. Commissioner Chilcott seconded the motion and all voted 'aye'.

In other administrative business, Commissioner Lund made a motion to sign a letter of support for the SAFE grant from the Department of Public Health and Human Services. Commissioner Chilcott seconded the motion and all voted 'aye'.